

## **REMARKS**

In accordance with 37 C.F.R. § 1.114, Applicant has submitted a Request for Continued Examination (RCE) of the above-referenced patent application. By the amendments and remarks provided herein, Applicant has addressed all outstanding issues presented in the Final Office Action dated **March 30, 2004** (hereafter, the Action), in which claims 3, 5, 8, 10, 13 and 15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for insufficient antecedent basis, and claims 1, 3, 5, 6, 8, 10, 11, 13, and 15 are rejected under 35 U.S.C § 103(a) as being unpatentable over Wei et al. (U.S. Patent No. 6,515,967, hereinafter "Wei").

### **Current Status of Claims:**

With this amendment, claims 1, 3, 5, 6, 8, 10, 11, 13, and 15 remain pending. No claims are cancelled or added. Applicant offers to amend claims 3, 5, 8, 10, 13 and 15 to address the 35 U.S.C. § 112 rejection of these claims. Additionally, Applicant offers to amend claim 11 to particularly claim that which Applicant considers to be the invention.

### **Rejection of Claims:**

#### **35 U.S.C. § 112, second paragraph:**

On page 2 of the Action, claims 3, 5, 8, 10, 13 and 15 were rejected under 35 U.S.C. § 112, second paragraph for insufficient antecedent basis for the limitations in these claims. In response, Applicant has amended claims 3, 5, 8, 10, 13 and 15 to correctly recite the proper

independent claim from which each of the above claims depend upon. In light of such amendments to these claims, Applicant respectfully requests that the rejection to claims 3, 5, 8, 10, 13 and 15 be withdrawn.

35 U.S.C. § 103(a):

On page 3 of the Action, claims 1, 3, 5, 6, 8, 10, 11, 13 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wei. The rejection of these claims on the above stated grounds is respectfully traversed.

Claim 1, as previously presented, states:

An apparatus comprising:  
a data path output unit to output a packet header for a message request transaction, the packet header including a format field to indicate the length of the packet header....

Emphasis added.

As is well-established, to make a *prima facie* rejection of obviousness under 35 U.S.C § 103(a), the prior art reference (or references when combined) must disclose or suggest all the claim limitations. See MPEP 2143. In this case, as developed more fully below, Applicant respectfully submits that this burden has not been met.

Applicant respectfully disagrees that Wei discloses or suggest all the elements of claim 1 cited above. In particular, Applicant respectfully disagrees that Wei teaches an apparatus comprising a packet header including a format field to indicate the length of the packet header.

The Action concedes that “Wei may not specifically disclose that the format field indicates the length of the packet header.” See Action, page 3, emphasis added. The Action

goes on to claim that “Wei discloses that the header 509 may follow other protocols..., whereby the version 601 would indicate a specific protocol implicitly having a specific length.” See Action, page 3. Further, the Action claims “Wei clearly implies that the format field (e.g., by version 601) indicates the length of the packet header by teaching that the header 509 may follow other protocols, implicitly having specific lengths....” See Action, page 4. Applicant respectfully disagrees.

Wei discloses in Fig. 6 an MRM message header (509) which includes a four-bit field (601) that contains a version number of the MRM being used to detect faults in the multicast routing infrastructure. See Col. 7, ln 30-38. Applicant respectfully submits that (601) does not state or imply what protocol is being followed in header (509). Rather, (601) merely states the version of the MRM that is being used.

Furthermore, as far as the rationale for Wei clearly implying that the format field (601) indicates the length of the packet header by teaching that the header (509) may follow other protocols, Applicant respectfully submits this conclusory, over-generalized and unsupported speculation is not an objective reason sufficient to establish *prima facie* obviousness. See, *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

Applicant respectfully asserts that, based on the rationale articulated above, the Examiner has not established a *prima facie* case of obviousness to support the rejection of claim 1 under 35 U.S.C. § 103(a). Accordingly, Applicant respectfully requests that the Examiner withdraw rejection of claim 1.

Independent claims 6 and 11 also include similar elements to claim 1. In particular, claims 6 and 11 contain the elements of a format field to indicate the length of the packet header. Accordingly, claims 6 and 11 are patentable over the cited references for the same reasons as

those presented for claim 1. Therefore, Applicant respectfully requests that the Examiner withdraw rejection of claims 6 and 11.

Applicant notes that claims 3, 5, 8, 10, 13 and 15 depend from patentable base claims 1, 6 and 11, respectively. As a result, in addition to any independent bases for patentability, Applicant respectfully submits that claims 3, 5, 8, 10, 13 and 15 are patentable over the cited references by virtue of at least this dependence. Thus, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejections of 3, 5, 8, 10, 13 and 15 be withdrawn.

### Conclusion

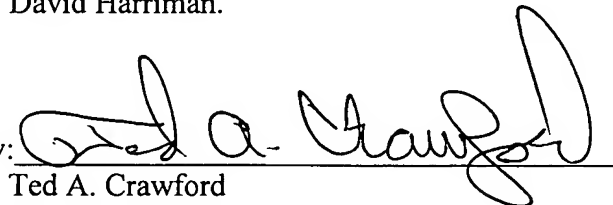
For at least the foregoing reasons, Applicant respectfully submits that claims 1, 3, 5, 6, 8, 10, 11, 13, and 15 are in condition for allowance and such action is earnestly solicited. *The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.*

Please charge any shortages and credit any overcharges to our Deposit Account number 50-0221.

Respectfully submitted,  
David Harriman.

Date: 7/30/04

by:



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